

December 7, 2018

VIA HAND DELIVERY & ELECTRONIC SUBMISSION

William Wehrum
Assistant Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Attn: Docket No. NHTSA-2018-0067

Docket No. EPA-HQ-OAR-2018-0283

**Re: Environmental Defense Fund Request to Reopen Comment Period on
Environmental Protection Agency's and National Highway Traffic Safety
Administration's Proposed Rule: The Safer Affordable Fuel-Efficient (SAFE)
Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed.
Reg. 42,986 (Aug. 24, 2018) (“Proposed Rollback”)**

Dear Assistant Administrator Wehrum:

The Environmental Defense Fund (“EDF”) appreciates your invitation to discuss our serious concerns regarding the above proposal, which will expose Americans to substantial amounts of additional climate-destabilizing and health harming pollution from cars and light trucks and will force consumers to spend more of their hard-earned money at the gas pump. This letter and accompanying slides offer a brief overview of a selection of our principal concerns, which are set forth comprehensively and in greater detail in our submissions to the dockets.

On behalf of our members across the country, EDF reiterates our request that the Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”) withdraw the agencies’ deeply flawed Proposed Rollback of the agencies’ Clean Car Standards. EDF previously submitted a set of detailed technical comments documenting the serious and pervasive flaws with the Proposed Rollback—features of the proposal that exceed the agencies’ statutory authorities, rely upon novel, opaque methodologies that have been widely rejected, and otherwise render the proposal arbitrary, capricious and unlawful.¹ EDF has also joined other public health and environmental organizations in submitting a comment focusing on the proposal’s numerous legal and procedural deficiencies.² Our earlier comment submissions

¹ All public comments signed by EDF are available at <https://www.edf.org/climate/clean-car-standards-legal-resources>.

² *Id.*

underscore the proposal's extensive analytic flaws and unlawful application of the agencies' authorities, EPA's impermissible delegation of its responsibilities to NHTSA, the agencies' illegal attack on long-standing state programs, the deeply flawed Draft Environmental Impact Statement, and the proposal's pervasive and extreme failure to abide by required analytic and stakeholder engagement procedures during its development; all are fatal flaws that demand that the agencies start over.

As an insufficient (but necessary) step, we urge the agencies to immediately reopen the comment period and address unlawful inadequacies that have compromised the underlying technical analysis and hindered the public's ability to participate in the rulemaking process, including providing thus-far missing information on the Proposed Rollback's underlying analysis. As described below and in earlier comments, these steps are necessary to afford the public a meaningful opportunity to comment on all aspects of the Proposed Rollback.

These fundamental deficiencies began even before the agencies issued the Proposed Rollback, when EPA issued a revised Final Determination that the model year 2022-25 standards were no longer appropriate. EPA bound itself by regulation to make this determination in a transparent, fact-based, and rigorous manner. However, then-Administrator Pruitt's revised Final Determination bore none of these qualities. EPA's determination—set forth in a brief Federal Register notice based almost entirely on statements from the auto industry—failed to engage with (let alone explain) the thousands of pages of careful analysis supporting the existing standards as reasonable, cost-effective, and essential measures to reduce climate-destabilizing emissions from the transportation sector. Agency regulations, along with administrative law principles and basic tenets of good government, require that EPA issue a determination that adheres to the procedures that EPA agreed to when the agency finalized the Clean Cars Standards. Indeed, a broad coalition of states, industry organizations, and health and environmental groups challenged the Final Determination based on these and other deficiencies and the D.C. Circuit has recently asked for briefing on the merits of those claims.

The notice of proposed rulemaking and EPA and NHTSA's actions during the comment period further exacerbated these errors. In particular, despite repeated requests,³ the agencies withheld substantial amounts of information essential for the public to understand, evaluate, and critique the Proposed Rollback.⁴ These include, among other things:

³ Letter from EDF, NRDC, Safe Climate Campaign, & UCS, to EPA Assistant Administrator William Wehrum (Mar. 20, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0827-11456>; Letter from Irene Gutierrez, NRDC, and Erin Murphy, EDF, to National Freedom of Information Officer, EPA (July 25, 2018) (FOIA Request # EPA-HQ-2018-010465); Letter from EDF, NRDC, Safe Climate Campaign, & UCS, to EPA Assistant Administrator William Wehrum (Sept. 20, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-1057>.

⁴ In addition to information that the agencies did not and have not yet provided, significant information was placed into the rulemaking docket immediately before the close of the comment period, far too late to allow the public to review it and rely upon it in developing comments. Among other things, this included transcripts of all the public hearings, which prevented commenters from relying on this information. Moreover, the agencies initially provided only sixty days for the public to develop thorough comments on a 500-page proposed rule, 1,600-page Preliminary

- The OMEGA model and related EPA modeling tools, which EPA has long used to analyze the cost and effectiveness of its Clean Car Standards;⁵
- The Autonomie model, including all input data and model settings used for all the Autonomie runs related to the technologies described in the Proposed Rollback, which is critical to the development of compliance pathways and costs, and is entirely nontransparent;
- Data underlying the Volpe sales module—which was arbitrarily provided to certain stakeholders late in the comment period but still has not been made broadly available to the public;
- Data used to derive the statistical model that predicts fatality rates by vehicle age;
- The methodology used to develop the Volpe fleet share model; and
- The data used to develop VMT schedules by vehicle age.

These failures prevented meaningful public comment on all aspects of the proposal and are especially pernicious given that the agencies' analysis included many novel and untested modeling approaches that have never been subject to peer review; never addressed major concerns raised during the course of inter-agency review; and presented findings directly at odds with preexisting (and longstanding) agency analyses. Withholding this and other information from the public violates EPA's and NHTSA's obligations under the Clean Air Act and the Administrative Procedure Act, respectively. The law therefore requires that the agencies immediately disclose this information and reopen the public comment period.

Reopening the comment period is also warranted to provide the public a full and complete opportunity to provide public testimony on the agencies' proposal. After initially noticing hearings in three major cities, EPA without explanation shifted away from these locations, limiting opportunities for residents in Southern California and the D.C. Metro Area to attend local hearings on the proposal. Moreover, EPA denied a request from California that the agency provide a public hearing specifically dedicated to the EPA's unprecedented proposal to strip California of their longstanding authority to adopt their own State Clean Car Standards. Instead of constraining public input, the agencies should ensure that Americans from all parts of the country have an opportunity to convey to agency officials the adverse consequences EPA's damaging proposal would have on their health, the climate, and their pocketbooks. Indeed, the State of Colorado recently, by unanimous vote of the state Air Quality Control Commission,

Regulatory Impact Analysis, and 1,300-page DEIS. Despite receiving numerous requests to provide meaningful additional time for stakeholders to develop their comments, including from the auto industry and multiple state governments, the agencies added a mere three days to the comment period. Here and elsewhere, the agencies have slighted the public's ability to participate fully and fairly concerning a sweeping, multifaceted proposal that has profound implications for the health, welfare and economy of the nation over the coming decades.

⁵ EDF and NRDC have recently filed a lawsuit seeking these records. EDF & NRDC, Complaint for Declaratory & Injunctive Relief, Case No. 18-cv-11227 (S.D.N.Y., filed Dec. 3, 2018), http://blogs.edf.org/climate411/files/2018/12/Complaint.pdf?_ga=2.232137691.570208019.1543813541-464435259.1532543339.

adopted State Clean Car Standards as authorized by section 177 of the Clean Air Act—further evidence of the importance of clean, low-emitting vehicles to Americans across the country.

We underscore that the Proposed Rollback is irredeemably flawed and should be withdrawn. While nothing short of withdrawal can cure all of the Proposed Rollback's deficiencies, the serious procedural and substantive flaws discussed above and in already submitted comments require that the agencies immediately reopen the comment period and provide the public with the information needed to meaningfully comment on all aspects of the Proposal Rollback. We appreciate the opportunity to submit this supplemental request and encourage the agencies to contact us with any further questions.

Respectfully submitted,

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